

**UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO**

PROTECO Landfill Superfund Site Generator
Parties Group,

Plaintiff

vs.

Colorcon P.R. LLC,

Puerto Rico Investment Development Company,

Thermo King de Puerto Rico, Inc.,

Colgate-Palmolive de Puerto Rico, Inc.,

Crown Holdings, Inc.,

CROWN Beverage Packaging Puerto Rico, Inc.,

Energy Transfer (R&M), LLC,

Mars, Inc., and

Pepsi-Cola Manufacturing Co.

Defendants.

Civil Action No. 23-cv-1500

STATUS REPORT

TO THE HONORABLE COURT:

Plaintiff, the PROTECO Landfill Superfund Site Generator Parties Group (the “GPG” or “Plaintiff”) and Defendant Colorcon P.R. LLC through counsel, respectfully submit the following Status Report. Counsel for Plaintiff have attempted to confer with counsel for all parties regarding this status report and proposed order. Defendants Crown Holdings, Inc., CROWN Beverage Packaging Puerto Rico, Inc., Mars, Inc., and Colgate-Palmolive de Puerto Rico, Inc., through counsel, have approved this status report and the proposed order submitted herewith. These parties are in the process of retaining Puerto Rico counsel. Defendant Energy Transfer (R&M), LLC declined to join the status report but supports Paragraphs 1 and 3 of the proposed order. Defendant Thermo King de Puerto Rico, Inc. declined to join the status report.

Counsel for Plaintiff has also reached out to counsel for Pepsi-Cola Manufacturing, Co. but has not received a position from this party with regard to the status report or proposed order. Defendant Puerto Rico Investment Development Company has been unresponsive as described below.

SYNOPSIS OF THE CASE

This is an action under sections 107 and 113 of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. § 9601 *et seq.* involving the PROTECO Landfill Superfund Site in Peñuelas, Puerto Rico, a Federally listed Superfund Site on the National Priorities List (the “Site”). The GPG has agreed to conduct a Remedial Investigation and Feasibility Study (“RIFS”) at the Site with oversight by the United States Environmental Protection Agency (“EPA”). The GPG filed this action for cost recovery and contribution under sections 107 and 113 of CERCLA for response costs that the GPG and its members have expended to date and will expend in the future to complete the RIFS under an Administrative Settlement Agreement and Order on Consent, as amended (the “ASAOC”) with EPA. Finalization of the work plan for the Remedial Investigation is underway. Plaintiff is also in the process of identifying additional potentially responsible parties, and may be seeking to add additional defendants over the next several months.

I. STATE OF THE PLEADINGS

The Complaint was filed on October 4, 2023 against Defendants Colorcon P.R. LLC (“Colorcon”), Thermo King de Puerto Rico, Inc. (“Thermo King”), and Puerto Rico Investment Development Company (“PRIDCO”). Colorcon and Thermo King were served on December 11, 2023.

Service was completed on PRIDCO’s registered agent on December 12, 2023, but the

registered agent rejected the service and stated that PRIDCO is inactive. On December 29, 2023 Plaintiff then served the Complaint on the Delaware Secretary of State, as authorized by Delaware law, but service was again rejected for the same reason. Plaintiff has contacted and shared the Complaint with counsel for PRIDCO's parent, the Puerto Rico Industrial Development Company. Plaintiff is evaluating whether any other steps are required to complete service on PRIDCO.

The First Amended Complaint was filed on January 5, 2024, adding six additional defendants: Colgate-Palmolive de Puerto Rico, Inc., Crown Holdings, Inc. CROWN Beverage Packaging Puerto Rico, Inc., Energy Transfer (R&M), LLC, Mars, Inc., and Pepsi-Cola Manufacturing Co. All of the named defendants in the First Amended Complaint, with the exception of Energy Transfer (R&M), LLC and Pepsi-Cola Manufacturing Co., were served on January 10, 2024. Energy Transfer (R&M), LLC was served on January 23, 2024. Pepsi-Cola Manufacturing Co. waived service on January 24, 2024.

Plaintiff is working to identify additional potentially responsible parties ("PRPs") that sent waste to the Site and may be liable for response costs. Plaintiff recently identified a source of additional PROTECO landfill records and served a subpoena on Puerto Rico Department of Natural and Environmental Resources and its document vendor, Infokeeper of PR, Inc. d/b/a Data Storage Centers, to obtain relevant Site documents. Plaintiff is also continuing negotiations with a number of PRPs that may join the GPG, and Plaintiff expects those discussions to conclude in early February. As a result of the ongoing investigation and negotiations, Plaintiff may identify additional defendants that should be included in this case. To accommodate this process, which is beneficial to the overall efficient resolution of this matter, Plaintiff may request leave to file a Second Amended Complaint. Plaintiff proposes to include an update on this

process no later than April 1, 2024.

III. PROPOSED SCHEDULE

The parties hereto propose to the Court that an efficient schedule be implemented that streamlines the early exchange of information, creates an opportunity for early resolution, and allows for the newly added and potential additional defendants to be on a comparable schedule to the initial parties in the action. As such, the parties hereto request:

1. that responsive pleadings be held in abeyance at this time;
2. the parties be ordered to preserve and confer on the exchange of core documents related to historical PROTECO landfill operations, materials sent to the PROTECO landfill, and the composition of such material;
3. that the parties be ordered to meet and confer regarding the establishment of a common document repository for PROTECO landfill-related records and parties' records relevant to waste sent to the Site and to submit a status report and additional proposed scheduling order to the Court by April 1, 2024.

Respectfully submitted this 25th day of January, 2024.

SEPULVADO, MALDONADO & COURET

/s/ Albéniz Couret Fuentes

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** pro hac vice pending*

Counsel for Defendant Colorcon P.R. LLC

CERTIFICATE OF SERVICE

I certify that, on this same date, this document was uploaded to the CM/ECF System which in turn will automatically send an electronic copy thereof to counsel for all parties to the email addresses of record. It is hereby certified that a copy of this Status Report will be served immediately upon filing to: Colgate-Palmolive de Puerto Rico, Inc. by electronic mail through its respective counsel, Attorney PJ Jayachandran: pj_jayachandran@colpal.com, and John Rousakis: jrousakis@omm.com; and Colorcon P.R. LLC, by electronic mail through its respective counsel, Attorney John P. Judge: jjudge@landairwater.com, and Alexandra Casellas-Cabrera: acasellas@amgprlaw.com; and Thermo King de Puerto Rico, Inc., by electronic mail through its respective counsel, Attorney Kirstin Etela: ketela@daypitney.com; and Crown Holdings, Inc. and CROWN Beverage Packaging Puerto Rico, Inc. by electronic mail through its respective counsel, Attorney David F. Edelstein: dedelstein@archerlaw.com; and Mars, Inc. by electronic mail through its respective counsel, Attorney Arthur S. Garrett III: garrett@khlaw.com; and Pepsi-Cola Manufacturing Co., by electronic mail through its respective counsel, Attorney Suzette Recinos: suzette.recinos@pepsico.com.

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